

No. 16469

United States
Court of Appeals
for the Ninth Circuit

M. M. ZENOFF, COMMERCIAL CREDIT CORPORATION and SOUTHWESTERN PUBLISHING COMPANY, INC., Appellants,

vs.

CHARLES J. KETCHAM, doing business as Lake Motors and Studebaker Sales and Service and Studebaker-Packard Sales Agency, Appellee.

Transcript of Record

Appeal from the United States District Court
for the District of Nevada

FILED

JUL 18 1960

FRANK H. SCHMID, CLERK

No. 16469

United States
Court of Appeals
for the Ninth Circuit

M. M. ZENOFF, COMMERCIAL CREDIT CORPORATION and SOUTHWESTERN PUBLISHING COMPANY, INC., Appellants,

vs.

CHARLES J. KETCHAM, doing business as Lake Motors and Studebaker Sales and Service and Studebaker-Packard Sales Agency,
Appellee.

Transcript of Record

Appeal from the United States District Court
for the District of Nevada

INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

	PAGE
Amended and Supplemental Petition to Adju- dicate the Debtor a Bankrupt.....	15
Answer of Alleged Bankrupt.....	7
Appeal:	
Certificates of Clerk to Transcript of Rec- ord on	48
Notice of	47
Statement of Points on (USCA).....	94
Certificates of Clerk to Transcript of Record..	48
Certificate of Referee on Petition For Review	37
Motion to Vacate and Set Aside Order Denying Petition For Review and Petition to Vacate Sale Under Deed of Trust.....	34
Names and Addresses of Attorneys.....	1
Notice of Appeal.....	47
Order Denying Prayer of Petition For Review and Petition to Vacate Sale Under Deed of Trust	33

Order Dismissing Proceedings, Filed Feb. 26, 1959	41
Order Dismissing Proceedings For Want of Jurisdiction, Filed June 18, 1957.....	22
Order Extending Time to Petition For Review	24
Order of General Reference.....	7
Order on Motion to Vacate and Set Aside Order Denying Petition For Review and Petition to Vacate Sale Under Deed of Trust..	35
Petition to Adjudicate Debtor a Bankrupt....	3
Petition For Injunction Restraining Sale Under Deed of Trust.....	9
Petition For Review of Referee's Order Dismissing Proceedings	24
Petition to Vacate and Set Aside Sale Under Deed of Trust.....	28
Referee's Certificate on Petition For Review..	37
Referee's Order Dismissing Petition For Lack of Jurisdiction	22
Second Amended and Supplemental Petition to Adjudicate Debtor a Bankrupt.....	19
Statement of Points on Which Appellants Will Rely (USCA)	94
Temporary Restraining Order and Order to Show Cause	13
Transcript of Proceedings and Testimony of April 15, 1957.....	49

Transcript of Proceedings—(Continued):

Witness For Alleged Bankrupt:

Ketcham, Charles J.

—direct 86

Witness For Claimant:

Ketcham, Charles J.

—redirect 82

—recross 85

Witnesses For Petitioner:

Hillis, Basil

—direct 68

—cross 69

—redirect 73

—recross 77

Ketcham, Charles J.

—direct 58

—redirect 66

Morrell, Franklin T.

—direct 78

—cross 79

NAMES AND ADDRESSES OF ATTORNEYS

CALVIN C. MAGLEBY,
109 South Third Street,
Las Vegas, Nevada,
For the Appellants.

HAWKINS, CANNON AND KELLY,
112 North Third Street,
Las Vegas, Nevada,

GOLDWATER AND SINGLETON,
109 South Third Street,
Las Vegas, Nevada,
For the Appellee. [1]*

* Page numbers appearing at bottom of page of Original Transcript of Record.

In the United States District Court
For the District of Nevada

In Bankruptcy No. 121

In the Matter of

CHARLES J. KETCHAM, doing business as
LAKE MOTORS, and as STUDEBAKER
SALES & SERVICE, and as STUDE-
BAKER-PACKARD SALES AGENCY,
Bankrupt.

PETITION

To: The Honorable Judges of the United States
District Court for the District of Nevada:

The Petition of M. M. Zenoff, of the City of Las Vegas, County of Clark, State of Nevada, U. S. Tire Supply, Inc., a Nevada corporation, having its principal place of business in the City of Las Vegas, County of Clark, State of Nevada, and Commercial Credit Corporation, a Maryland corporation, having a place of business in the City of Las Vegas, County of Clark, State of Nevada, respectfully shows:

I.

Charles J. Ketcham, doing business as Lake Motors and as Studebaker Sales & Service, and as Studebaker-Packard Sales Agency, has had his principal place of business within the above judicial district.

II.

Said Charles J. Ketcham owes debts to the amount of \$1,000.00 and over, and is not a wage earner or farmer.

III.

Your Petitioners are creditors of the said Charles J. Ketcham, having provable claims against him, fixed as to liability and [2] liquidated as to amount, amount in the aggregate, in excess of the value of securities held by them, to more than \$500.00. The nature and amount of your Petitioners' claims are as follows:

(a) M. M. Zenoff, for radio broadcasting services	\$608.63
(b) U. S. Tire Supply, Inc., for goods, wares, and merchandise sold and delivered	\$26.25
(c) Commercial Credit Corporation, for moneys loaned to, or guaranteed by, the said Charles J. Ketcham	\$41,932.25

The claim of Petitioner Commercial Credit Corporation is secured by certain liens including an attachment lien upon certain property of the said Charles J. Ketcham, but the amount of its claim exceeds the value of the security therefor by more than \$30,000.00.

IV.

The said Charles J. Ketcham, within four months last past committed an act of Bankruptcy, in that he did heretofore, to-wit, on the 4th day of December, 1956, permit, while insolvent, one of his creditors, namely Young Electric Sign Company,

through legal proceedings, to obtain a lien upon certain of his property, namely, all that certain real property in the County of Clark, State of Nevada, described as follows:

Lot One Hundred Seventy-Seven (177) in Parcel "E" of Henderson Townsite Annex No. 4, as shown by map thereof on file in Book 3 of Plats, page 41, in the Office of the County Recorder of Clark County, Nevada.

Excepting therefrom the following described portion thereof:

Beginning at the most Northerly corner of said Lot 177; thence South $42^{\circ}23'00''$ East a distance of 160.00 feet to a point; thence South $47^{\circ}37'00''$ West a distance of 105.99 feet to a point on the East line of Water Street (100 feet wide); thence North $8^{\circ}51'37''$ West along said East line a distance of 191.92 feet to the point of beginning.

and has failed to vacate or discharge said lien within thirty days from the date said lien was obtained. And in this behalf your Petitioners represent that in that certain action now pending in [3] the Eighth Judicial District Court of the State of Nevada, in and for the County of Clark, numbered in the files of said Court as No. 77103, in which said Young Electric Sign Company is plaintiff and the said Charles J. Ketcham was defendant, a writ of attachment was issued out of and under the seal of said Court, and on the 4th day of December, 1956, was levied upon all of the right, title and interest of the said Charles J. Ketcham in and

to the real property hereinbefore described; and that the lien of said attachment has not been vacated or discharged.

Wherefore, your Petitioners pray that service of this Petition with subpoena may be made upon said Charles J. Ketcham as provided in the Acts of Congress relating to Bankruptcy, and that he may be adjudged by the Court to be a Bankrupt within the purview of such Acts.

/s/ M. M. ZENOFF.

U. S. TIRE SUPPLY, INC.,

/s/ By H. D. DAVIESS,
Its President.

COMMERCIAL CREDIT
CORPORATION,

/s/ By DAVID ZENOFF,
Its Attorney.

ZENOFF, MAGLEBY &
MANZONIE,

/s/ By DAVID ZENOFF,
Attorneys for Petitioners. [4]

Duly Verified.

[Endorsed]: Filed March 1, 1957.

[Endorsed]: Filed February 10, 1958.

[Title of District Court and Cause.]

ORDER OF GENERAL REFERENCE

At Las Vegas, Nevada, in said district, on the 1st day of March, 1957.

Whereas a petition was filed in this court, on the 1st day of March, 1957, against Charles J. Ketcham, the alleged bankrupt above named, praying that he be adjudged a bankrupt under the Act of Congress relating to bankruptcy;

It is ordered that the above entitled proceeding be, and it hereby is, referred to John C. Mowbray, one of the referees in bankruptcy of this court, to take such further proceedings therein as are required and permitted by said Act, and that the said Charles J. Ketcham shall henceforth attend before the said referee and submit to such orders as may be made by him or by a judge of this court relating to said bankruptcy.

/s/ ROGER T. FOLEY,
District Judge. [6]

[Endorsed]: Filed March 1, 1957.

[Title of District Court and Cause.]

ANSWER OF ALLEGED BANKRUPT

A Petition having been filed in the above Court on the 1st day of March, 1957, praying that your respondent, the alleged bankrupt above named, be

adjudged a bankrupt, your respondent now appears and answers the said Petition as follows:

1. That respondent is now, and has been, for more than six months prior to March 1, 1957, a resident of and domiciled within the State of California and that his principal place of business has been in the State of California during all of the aforesaid period and that this Court is therefore without jurisdiction.

2. Respondent denies doing business as Lake Motors and as Studebaker Sales & Service, and as Studebaker-Packard Sales Agency, with his principal place of business within the jurisdiction of this judicial district, or elsewhere within six months months prior to March 1, 1957.

3. Respondent admits the allegations contained in Paragraph II of said Petition.

4. Respondent denies that Petitioners have provable claims against him, fixed as to liability and liquidated as to amount, as alleged in Paragraph III of said petition, except [8] Respondent alleges he is indebted to M. M. Zenoff in the sum of \$208.30.

5. Respondent denies that he permitted his creditors to obtain a lien, or to permit an attachment thereon of certain of his property while he was then insolvent, as alleged in Paragraph IV of said Petition.

Wherefore, Your Respondent prays that the aforesaid Petition be dismissed for lack of jurisdiction, or in the event it be determined that this

Court has jurisdiction that a hearing may be had on said Petition and this answer, and that the issues presented thereby may be determined by the Court.

/s/ CHARLES J. KETCHAM.

Duly Verified. [9]

[Endorsed]: Filed March 8, 1957.

[Endorsed]: Filed February 10, 1958.

[Title of District Court and Cause.]

PETITION FOR INJUNCTION

The Petition of M. M. Zenoff, U. S. Tire Supply, Inc., and Commercial Credit Corporation respectfully shows:

I.

That they are creditors of Charles J. Ketcham, doing business as Lake Motors, and as Studebaker Sales & Service and Studebaker-Packard Sales Agency, and have filed a Petition in involuntary bankruptcy against said Charles J. Ketcham.

II.

That the said Charles J. Ketcham is the owner of all that certain real property in the County of Clark, State of Nevada, described as follows:

Lot One Hundred Seventy-Seven (177) in Parcel "E" of Henderson Townsite Annex No. 4, as shown

by map thereof on file in Book 3 of Plats, page 41, in the Office of the County Recorder of Clark County, Nevada.

Excepting therefrom the following described portion thereof:

Beginning at the most Northerly corner of said Lot 177; thence South $42^{\circ}23'00''$ East a distance of 160.00 feet to a point; thence South $47^{\circ}37'00''$ West a distance of 105.99 feet to a point on the [1] East line of Water Street (100 feet wide); thence North $8^{\circ}51'37''$ West along said East line a distance of 191.92 feet to the point of beginning.

III.

That said real property is subject to a deed of trust dated October 13, 1955, executed and delivered by the said Charles J. Ketcham and Ima May Ketcham to Pioneer Title Insurance and Trust Company to secure their promissory note in favor of the Bank of Nevada in the original principal sum of \$85,000.00 which said deed of trust is recorded in the Office of the County Recorder of the County of Clark, State of Nevada, in Book 70 of Official Records as Instrument No. 59221. By instrument recorded on January 22, 1957, in the Office of the County Recorder of the County of Clark, State of Nevada, in Book 119 of Official Records as Instrument No. 97921, the Bank of Nevada assigned said deed of trust and the obligations thereby secured to James Blankenship.

IV.

Petitioners are informed and believe, and upon such information and belief allege that all of the obligations secured by said deed of trust have been paid except the sum of \$25,000.00, plus interest thereon from a date not earlier than July 1, 1956, at the rate of six per cent per annum.

V.

On the 26th day of November, 1956, the beneficiary under said deed of trust caused to be executed and recorded in the Office of the County Recorder of the County of Clark, State of Nevada, as Instrument No. 94168, a notice of breach of the obligation secured by said deed of trust and of its election to cause the property subject to said deed of trust to be sold to satisfy the obligation thereby secured. Petitioners are informed and believe, and upon such information and belief allege that the trustee under said deed of trust, the Pioneer [2] Title Insurance and Trust Company, unless enjoined by this court will proceed to advertise said property at public auction to satisfy the obligation secured by said deed of trust.

VI.

That the fair value of the property subject to said deed of trust exceeds the amount of the obligations secured by said deed of trust by more than \$25,000.00, which sum will be available for distribution to the creditors of said Charles J. Ketcham,

if said property is administered in the bankruptcy proceedings and sold in an orderly manner. The value of said property over and above the amount of the obligations secured by said deed of trust will be lost to the creditors of said Charles J. Ketcham if the trustee and beneficiary under said deed of trust are suffered or permitted to sell said property.

Wherefore, petitioners pray that a temporary restraining order issue restraining the trustee and beneficiary under said deed of trust, that they be ordered to show cause why an injunction should not issue enjoining them from selling said property pending the further order of this court, and that upon due notice and hearing such an injunction issue.

ZENOFF, MAGLEBY &
MANZONIE,

/s/ By DAVID ZENOFF,
Attorneys for Petitioner. [3]

Duly Verified.

[Endorsed]: Received and Filed March 13, 1957.

[Title of District Court and Cause.]

TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE

On consideration of the verified petition of M. M. Zenoff, U. S. Tire Supply Co., Inc., and Commercial Credit Corporation, it appearing (1) that irreparable injury will result to the creditors of Charles J. Ketcham, the alleged bankrupt, unless a temporary restraining order issue restraining Pioneer Title Insurance & Trust Company, and James Blankenship and all persons in active concert or participation with them from selling or causing to be sold under the deed of trust executed by the said Charles J. Ketcham and Ima May Ketcham, his wife, to Pioneer Title Insurance & Trust Company, as trustee to secure a note in favor of Bank of Las Vegas, which deed of trust is recorded in the Office of the County Recorder of Clark County, Nevada, in Book 70 of Official Records as Instrument No. 59221, and which deed of trust, together with the obligation thereby secured was assigned by the said Bank of Las Vegas to said James Blankenship by instrument recorded in the Office of the County Recorder of Clark County, Nevada, in Book 119 of Official Records as Instrument No. 97921;

(2) That said irreparable injury will consist of the loss to the creditors of the said Charles J. Ketcham of the excess amounting to more than \$25,000.00 of the value of the property subject to said deed of trust over the amount of the obliga-

tions thereby secured, and that such irreparable injury will result and ensue before this matter enjoining the sale of said property can be heard on notice.

Now, Therefore, It Is Hereby Ordered:

(1) That the said Pioneer Title Insurance and Trust Company and James Blankenship be and appear before the undersigned, Referee in Bankruptcy, at the courtroom of the United [5] States District Court in the United States Court House and Post Office Building, in the City of Las Vegas, Nevada, at the hour of 4:00 o'clock in the afternoon of the 22nd day of March, 1957, then and there to show cause if any they have why they, their officers, agents, servants, employees and attorneys and those persons in active concert or participation with them, should not be enjoined from selling the property subject to the aforesaid deed of trust or causing or permitting the same to be sold to satisfy the obligations thereby secured; and

(2) That pending the hearing and determination of the above and foregoing order to show cause, the said Pioneer Title Insurance and Trust Company and James Blankenship, their officers, agents, servants, employees and attorneys, and all persons in active concert or participation with them be, and they are hereby, restrained from selling the property subject to the aforesaid deed of trust or causing or permitting the same to be sold to satisfy the obligations thereby secured.

Dated this 13th day of March, 1957.

/s/ JOHN C. MOWBRAY,
Referee in Bankruptcy. [6]

Return on Service Attached. [7]

[Endorsed]: Received and Filed March 13, 1957.

[Title of District Court and Cause.]

AMENDED AND SUPPLEMENTAL
PETITION

To: The Honorable Judges of the United States
District Court For the District of Nevada:

The Petition of M. M. Zenoff of the City of Las Vegas, County of Clark, State of Nevada, Commercial Credit Corporation, a Maryland Corporation, having a place of business in the City of Las Vegas, County of Clark, State of Nevada, and Southwestern Publishing Co., Inc., a Nevada corporation, having its principal place of business in the City of Las Vegas, County of Clark, State of Nevada, respectfully shows:

I.

Charles J. Ketcham, doing business as Lake Motors and as Studebaker Sales & Service, and as Studebaker-Packard Sales Agency, has had his principal place of business within the above judicial district.

II.

Said Charles J. Ketcham owes debts to the amount of \$1,000.00 and over, and is not a wage earner or farmer.

III.

Your Petitioners are creditors of the said Charles J. Ketcham, having provable claims against him, fixed as to liability [10] and liquidated as to amount, which in the aggregate exceed \$500.00 over and above the value of securities held by them. The nature and amount of your petitioners' claims are as follows:

- | | |
|---|-------------|
| (a) M. M. Zenoff, for radio broadcasting services | \$ 608.63 |
| (b) Commercial Credit Corporation, for moneys loaned to, or guaranteed by, the said Charles J. Ketcham, In excess of..... | \$41,932.25 |
| (c) Southwestern Publishing Co., Inc., for newspaper advertising | \$ 167.25 |

The claims of Petitioners, M. M. Zenoff and Southwestern Publishing Co., Inc., are unsecured. The claim of Petitioner Commercial Credit Corporation is secured by certain liens, including attachment liens, but the amount of its claim exceeds the value of the security therefor by more than \$30,000.00.

IV.

The said Charles J. Ketcham, within four months next preceding the filing of the original Petition herein, committed an act of Bankruptcy, in that he

did heretofore, to-wit, on the 4th day of December, 1956, permit, while insolvent, one of his creditors, namely Young Electric Sign Company, through legal proceedings, to obtain a lien upon certain of his property, namely, all that certain real property in the County of Clark, State of Nevada, described as follows:

Lot One Hundred Seventy-Seven (177) in Parcel "E" of Henderson Townsite Annex No. 4, as shown by map thereof on file in Book 3 of Plats, page 41, in the Office of the County Recorder of Clark County, Nevada.

Excepting therefrom the following described portion thereof: [11]

Beginning at the most Northerly corner of said Lot 177; thence South $42^{\circ}23'00''$ East a distance of 160.00 feet to a point; thence South $47^{\circ}37'00''$ West a distance of 105.99 feet to a point on the East line of Water Street (100 feet wide); thence North $8^{\circ}51'37''$ West along said East line a distance of 191.92 feet to the point of beginning.

and has failed to vacate or discharge said lien within thirty days from the date said lien was obtained. And in this behalf your Petitioners represent that in that certain action now pending in the Eighth Judicial District Court of the State of Nevada, in and for the County of Clark, numbered in the files of said Court as No. 77103, in which said Young Electric Sign Company is plaintiff and the said Charles J. Ketcham was defendant, a writ of attachment was issued out of and under the seal of

said Court, and on the 4th day of December, 1956, was levied upon all of the right, title and interest of the said Charles J. Ketcham in and to the real property hereinbefore described; and that the lien of said attachment was not vacated or discharged prior to the filing of the original petition herein.

Wherefore, Your Petitioners pray that service of this Petition with subpoena may be made upon said Charles J. Ketcham as provided in the Acts of Congress relating to Bankruptcy, and that he may be adjudged by the Court to be a Bankrupt within the purview of such Acts.

M. M. ZENOFF,

/s/ By DAVID ZENOFF,
His Attorney.

COMMERCIAL CREDIT
CORPORATION,

/s/ By DAVID ZENOFF,
Its Attorney.

SOUTHWESTERN PUBLISHING
CO., INC.,

/s/ By [Illegible],
Vice President. [12]

Duly Verified. [13]

Receipt of Copy Attached. [14]

[Endorsed]: Received and Filed April 15, 1957.

[Endorsed]: Filed February 10, 1958.

[Title of District Court and Cause.]

SECOND AMENDED AND SUPPLEMENTAL
PETITION

To: The Honorable Judges of the United States
District Court For the District of Nevada:

The Petition of M. M. Zenoff of the City of Las Vegas, County of Clark, State of Nevada, Commercial Credit Corporation, a Maryland Corporation, having a place of business in the City of Las Vegas, County of Clark, State of Nevada, and Southwestern Publishing Co., Inc., a Nevada corporation, having its principal place of business in the City of Las Vegas, County of Clark, State of Nevada, respectfully shows:

I.

Charles J. Ketcham, doing business as Lake Motors, as Studebaker Sales & Service and as Studebaker-Packard Sales Agency, the alleged bankrupt, for the longer portion of the six months next preceding the filing of the original petition resided and had his domicile in San Bernardino, California, within the Southern District of California. Prior thereto the alleged bankrupt had his principal place of business in the County of Clark, State of Nevada within this judicial district. All but a small fraction of the alleged bankrupt's assets are located and almost all of his creditors reside or have their places of business within this judicial district, and the interest of justice and [15] the convenience of the creditors of the alleged bankrupt will be served and promoted by the retention of this proceeding in this judicial district.

II.

Said Charles J. Ketcham owes debts to the amount of \$1,000.00 and over, and is not a wage earner or farmer.

III.

Your Petitioners are creditors of the said Charles J. Ketcham, having provable claims against him, fixed as to liability and liquidated as to amount, which in the aggregate exceed \$500.00 over and above the value of securities held by them. The nature and amount of your petitioners' claims are as follows:

- | | |
|---|-------------|
| (a) M. M. Zenoff, for radio broadcasting services | \$ 608.63 |
| (b) Commercial Credit Corporation, for moneys loaned to, or guaranteed by, the said Charles J. Ketcham, In excess of..... | \$41,932.25 |
| (c) Southwestern Publishing Co., Inc., for newspaper advertising | 167.25 |

The claims of Petitioners, M. M. Zenoff and Southwestern Publishing Co., Inc., are unsecured. The claim of Petitioner Commercial Credit Corporation is secured by certain liens, including attachment liens, but the amount of its claim exceeds the value of the security therefor by more than \$30,000.00.

IV.

The said Charles J. Ketcham, within four months next preceding the filing of the original Petition herein, committed an act of Bankruptcy, in that he did heretofore, to-wit, on the 4th day of December,

1956, permit, while insolvent, one of his creditors, namely Young Electric Sign Company, through legal proceedings, to obtain a lien upon certain of his property, [16] namely, all that certain real property in the County of Clark, State of Nevada, described as follows:

Lot One Hundred Seventy-Seven (177) in Parcel (E" of Henderson Townsite Annex No. 4, as shown by map thereof on file in Book 3 of Plats, Page 41, in the Office of the County Recorder of Clark County, Nevada.

Excepting therefrom the following described portion thereof:

Beginning at the most Northerly corner of said Lot 177; thence South $42^{\circ}23'00''$ East a distance of 160.00 feet to a point; thence South $47^{\circ}37'00''$ West a distance of 105.99 feet to a point on the East line of Water Street (100 feet wide); thence North $8^{\circ}51'37''$ West along said East line a distance of 191.92 feet to the point of beginning.

and has failed to vacate or discharge said lien within thirty days from the date said lien was obtained. And in this behalf your Petitioners represent that in that certain action now pending in the Eighth Judicial District Court of the State of Nevada, in and for the County of Clark, numbered in the files of said Court as No. 77103, in which said Young Electric Sign Company is plaintiff and the said Charles J. Ketcham was defendant, a writ of attachment was issued out of and under the seal of said Court, and on the 4th day of December 1956,

was levied upon all of the right, title and interest of the said Charles J. Ketcham in and to the real property hereinbefore described; and that the lien of said attachment was not vacated or discharged prior to the filing of the original petition herein.

Wherefore, Your Petitioners pray that service of this Petition with subpoena may be made upon said Charles J. Ketcham as provided in the Acts of Congress relating to Bankruptcy, and that he may be adjudged by the Court to be a Bankrupt within the purview of such Acts.

M. M. ZENOFF,

/s/ By DAVID ZENOFF,

His Attorney. [17]

COMMERCIAL CREDIT
CORPORATION,

/s/ By DAVID ZENOFF,

Its Attorney.

SOUTHWESTERN PUBLISHING
CO., INC.,

/s/ DAVID ZENOFF,

Its Attorney.

Duly Verified. [18]

Acknowledgment of Receipt of Copy At-
tached. [19]

[Endorsed]: Filed May 3, 1957.

[Endorsed]: Filed February 10, 1958.

[Title of District Court and Cause.]

ORDER

This cause having come on to be heard at Las Vegas, Nevada, before the undersigned, John C. Mowbray, Referee in Bankruptcy, on the 13th day of April, 1957, upon the petition of M. M. Zenoff, Commercial Credit Corporation, a Maryland corporation, and Southwestern Publishing Co., Inc., a Nevada corporation, that Charles J. Ketcham be adjudicated a bankrupt and thereafter an amended and supplemental petition having been filed with the Court and the Court having received evidence and having considered the answer of Charles J. Ketcham filed herein, and upon consideration of the evidence and arguments of counsel, the Court finds that the respondent Charles J. Ketcham, is now and has been for more than six months prior to March 1, 1957, a resident of and domiciled within the State of California, and the Court is, therefore, without jurisdiction. That accordingly, said petition should be dismissed with costs.

Witness the Honorable John C. Mowbray, Referee in Bankruptcy.

Dated this 18th day of June, 1957.

/s/ JOHN C. MOWBRAY,

Referee in Bankruptcy. [20]

[Endorsed]: Received and Filed June 18, 1957.
John C. Mowbray, Referee.

[Endorsed]: Filed June 26, 1957. Oliver F. Pratt,
Clerk.

[Endorsed]: Filed February 10, 1958. Oliver F.
Pratt, Clerk.

[Title of District Court and Cause.]

ORDER EXTENDING TIME TO
PETITION FOR REVIEW

It Appearing that the petitioning creditors received no notice of any kind of the Order dated June 18, 1957, dismissing the petition and amended and supplemental petitions to adjudicate the above-named Charles J. Ketcham a bankrupt until June 25, 1957, and good cause being made to appear therefor,

It Is Ordered that the time within which the petitioning creditors may petition for a review of said order by the judge be and the same is hereby extended to and including July 6, 1957.

Dated this 5th day of July, 1957.

/s/ JOHN C. MOWBRAY,
Referee in Bankruptcy. [21]

[Endorsed]: Filed July 6, 1957.

[Endorsed]: Filed February 10, 1958.

[Title of District Court and Cause.]

PETITION FOR REVIEW OF REFEREE'S
ORDER DISMISSING PROCEEDINGS

The petition of M. M. Zenoff, Commercial Credit Corporation, a Maryland Corporation and Southwestern Publishing Co., Inc., a Nevada corporation, respectfully shows

1. That heretofore a petition was filed in the above entitled court praying that Charles J.

Ketcham be adjudicated an involuntary bankrupt; that upon the filing of said petition, an order was duly made and entered by the above entitled court referring said petition and all proceedings herein to John C. Mowbray, Esq., one of the referees in bankruptcy of said court; thereafter the said Charles J. Ketcham filed an answer to said petition, and the above named petitioning creditors filed an amended and supplemental petition; that thereafter to-wit, on the 13th day of April 1957, the matter came on for hearing before the said referee in bankruptcy, the said Charles J. Ketcham and the petitioning creditors appearing by their respective counsel, and oral and documentary evidence was adduced by the respective parties.

2. That on the 18th day of June, 1957, said referee in bankruptcy signed the following order:

“This cause having come on to be heard at Las Vegas, Nevada, before the undersigned, John C. Mowbray, Referee in Bankruptcy, on the 13th day of April, 1957, upon the petition of M. M. Zenoff, Commercial Credit Corporation, [22] a Maryland corporation, and Southwestern Publishing Co., Inc., a Nevada corporation, that Charles J. Ketcham be adjudicated a bankrupt and thereafter an amended and supplemental petition having been filed with the Court and the Court having received evidence and having considered the answer of Charles J. Ketcham filed herein, and upon consideration of the evidence and arguments of counsel, the Court finds that the respondent, Charles J. Ketcham, is now and has been for more than six months prior to March 1, 1957, a resident of and domiciled within

the state of California, and the Court is, therefore, without jurisdiction. That accordingly, said petition should be dismissed with costs.

Witness the Honorable John C. Mowbray, Referee in Bankruptcy.

Dated this 18th day of June, 1957.

/s/ JOHN C. MOWBRAY,
John C. Mowbray,
Referee in Bankruptcy.”

3. That said order is erroneous in that regardless of the residence or the domicile or place of business of the said Charles J. Ketcham this court had and has jurisdiction to entertain said petition and to adjudicate said Charles J. Ketcham a bankrupt; that under the provisions of Section 22 of the Bankruptcy Act as amended (11 U.S.C. 55) the above entitled court should either retain jurisdiction of the above entitled proceedings or transfer the same to the United States District Court for the district in which said Charles J. Ketcham resided, was domiciled or had his principal place of business during the greater part of the six months next preceding the filing of said petition, as the interests of parties might require; that the interests of the parties require that the court retain jurisdiction of said proceedings for the reason that substantially all of the assets of said Charles J. [23] Ketcham reside or have their places of business within the territorial jurisdiction of the above entitled court.

4. That the petitioning creditors did not receive notice of any kind of the signing of said order until the 25th day of June, 1957; that the original of said order was not transmitted to the Clerk of the above entitled Court, as required by Section 39 (a) (9) (11 U.S.C. 67 a) (9), or entered by the Clerk upon the Clerk's Bankruptcy Docket, as required by the first paragraph of General Order No. 1 of The General Orders in Bankruptcy until the 18th day of June 1957; that under the provisions of Section 67 (c) of the Bankruptcy (11 U.S.C. 67 c) the time within which a petition to review the aforesaid order may be filed will not expire until the 6th day of July 1957.

Wherefore, the petitioning creditors pray for a review of the aforesaid Order by the Judge of the above entitled court; that said Order be vacated and set aside; and that said Charles J. Ketcham be adjudicated a bankrupt.

ZENOFF & MAGLEBY,

/s/ By CALVIN C. MAGLEBY,

Attorneys for the Petitioning
Creditors. [24]

Duly Verified.

Acknowledgment of Receipt of Copy Attached. [25]

[Endorsed]: Filed July 6, 1957.

[Endorsed]: Filed February 10, 1958.

[Title of District Court and Cause.]

PETITION TO VACATE AND SET ASIDE
SALE UNDER DEED OF TRUST

The petition of M. M. Zenoff, Commercial Credit Corporation, a Maryland corporation, and Southwestern Publishing Co., Inc., a Nevada corporation, hereinafter referred to as the petitioning creditors, respectfully shows:

1. That heretofore a petition and amended and supplemental petitions were filed herein by creditors of the above-named Charles J. Ketcham praying that said Charles J. Ketcham be adjudicated an involuntary bankrupt; that upon the filing of the original petition herein the Court duly made and entered a general order of reference referring the proceedings to the Honorable John C. Mowbray, Esq., one of the referees in bankruptcy of the above-entitled court.

2. That at the time of the filing of said petition and amended and supplemental petitions said Charles J. Ketcham was the owner of all that certain real property in the County of Clark, State of Nevada, described as follows:

Lot One Hundred Seventy-Seven (177) in Parcel "E" of Henderson Townsite Annex No. 4, as shown by map thereof on file in Book 3 of Plats, page 41, in the Office of the County Recorder of Clark County, Nevada.

Excepting therefrom the following described portion thereof: [26]

Beginning at the most Northerly corner of said Lot 177; thence South $42^{\circ}23'00''$ East a distance of 160.00 feet to a point; thence South $47^{\circ}37'00''$ West a distance of 105.99 feet to a point on the East line of Water Street (100 feet wide); thence North $8^{\circ}51'37''$ West along said East line a distance of 191.92 feet to the point of beginning.

3. That said real property is subject to a deed of trust dated October 13, 1955, executed and delivered by the said Charles J. Ketcham and Ima May Ketcham to Pioneer Title Insurance and Trust Company to secure their promissory note in favor of the Bank of Nevada in the original principal sum of \$85,000.00 which said deed of trust is recorded in the Office of the County Recorder of the County of Clark, State of Nevada, in Book 70 of Official Records as Instrument No. 59221. That by an instrument recorded on January 22, 1957, in the Office of the County Recorder of the County of Clark, State of Nevada, in Book 119 of Official Records as instrument No. 97921, the Bank of Nevada assigned said deed of trust and the obligations thereby secured to James Blankenship.

4. That Petitioners are informed and believe, and upon such information and belief allege that all of the obligations secured by said deed of trust have been paid except the sum of \$25,000.00, plus interest thereon from a date not earlier than July 1, 1956, at the rate of six per cent per annum.

5. That value of the above described real property exceeds the total amount of all of the obligations secured by said deed of trust by more than \$60,000.00.

6. That the trustee under said deed of trust having threatened to sell the above described real property in exercise of the power of sale contained in said deed of trust for the purpose of satisfying the obligations thereby secured, the petitioning creditors on the 9th day of March 1957 filed herein a petition for an injunction enjoining the trustee and beneficiary under said deed of trust from selling said real property, in order that the equity of said [27] Charles J. Ketcham in said real property might be preserved for the benefit of his creditors; that thereafter the referee in bankruptcy entered a temporary restraining order and order to show cause restraining the trustee and beneficiary under said deed of trust from selling said real property and requiring them to show cause on the 22nd day of March 1957 why the prayer of said petition should not be granted; that by stipulation of counsel for the respective parties the hearing of said petition was continued until the 15th day of April 1957 and said temporary restraining order was continued in effect until that time; that on the 15th day of April 1957 the matter came on for hearing before the referee; that at the conclusion of said hearing said referee ordered that said temporary restraining order should continue in effect pending the further order of the court or referee.

7. That no order vacating said temporary restraining order has ever been made or entered but on the 18th day of June 1957 the referee signed an order dismissing the above entitled proceeding for want of jurisdiction; that the petitioning creditors received no notice of any kind of the signing of said order until the 25th day of June 1957; that the original of said order was not transmitted to the Clerk of the above entitled court as required by Section 37 (a) (9) of the Bankruptcy Act, as amended (11 U.S.C. 67 (a) (9)), or entered by the Clerk on the Clerk's Bankruptcy Docket, as required by General Order No. 1 of the General Orders in Bankruptcy, until the 26th day of June, 1957; that the time within which a petition for a review of said order by the Judge of the above entitled court will not expire until the 6th day of July 1957; that concurrently with the filing of this petition the petitioning creditors are filing a petition for a review of said order by the Judge of the above entitled Court.

8. That on the 2nd day of July 1957 prior to the final determination of the petition for an injunction referred to in [28] Paragraph 6 hereof, and prior to the expiration of the time within which a petition for a review of the referee's order dismissing these proceedings might be filed, the trustee under the aforesaid deed of trust purported, in the exercise of the power of sale therein contained, to sell said real property to the holder of the obligations secured by said deed of trust for the amount of said obligations.

9. That the said Charles J. Ketcham is insolvent; that his equity in said real property constitutes the only substantial asset available for the payment of his creditors; that if the aforesaid sale is not vacated and set aside the creditors of said Charles J. Ketcham will suffer irreparable injury; that said sale is void because made before the final determination of said petition for an injunction.

Wherefore, petitioners pray that said sale be set aside, and the purchaser at said sale and all persons claiming under him be forever enjoined and barred (a) from claiming any right, title or interest in said real property by virtue of said sale; and (b) from claiming any right, title or interest in said real property other than a lien for the payment of the amount of the obligations secured by said deed of trust.

ZENOFF & MAGLEBY,

/s/ By CALVIN C. MAGLEBY,
Attorneys for Petitioners.

HAWKINS & CANNON,

/s/ By HOWARD W. CANNON,
Attorney for Charles J.
Ketcham. [29]

Duly Verified. [30]

Acknowledgment of Receipt of Copy Attached.

[Endorsed]: Filed July 6, 1957.

[Title of District Court and Cause.]

ORDER DENYING PRAYER OF PETITION
FOR REVIEW, AND PETITION TO VA-
CATE SALE UNDER DEED OF TRUST

The petitioning creditors in the above entitled matter, on the 6th day of July, 1957, filed with the clerk of this Court, at Las Vegas, their "petition for review of referee's order dismissing proceedings," and filed in like manner on the same date their "petition to vacate and set aside sale under deed of trust";

These petitions, for reasons unknown to the Court, were not called to its attention until the Judge returned from vacation, September 3rd, 1957.

On the basis of the record now before the Court, and good cause appearing, it is

Ordered, that the prayer of each of the respective petitions be and they are hereby denied.

Dated at Carson City, Nevada, this 9th day of September, 1957.

/s/ JOHN R. ROSS,

U. S. District Judge. [33]

[Endorsed]: Filed September 9, 1957.

[Title of District Court and Cause.]

MOTION TO VACATE AND SET ASIDE
ORDER DENYING PETITION FOR RE-
VIEW AND PETITION TO VACATE
SALE UNDER DEED OF TRUST

The petitioning Creditors herein, M. M. Zenoff, Commercial Credit Corporation and Southwestern Publishing Co., Inc., respectfully move the Court to vacate and set aside the Order entered herein on September 9, 1957, entitled "Order Denying Prayer Of Petition For Review and Petition To Vacate Sale Under Deed Of Trust" on the ground that said Order was improvidently made and entered for the following reasons:

(a) The Petitions denied by said Order were not at the time of the entry of said Order properly before the Court for the reason that as of that time the Referee had not made or filed his certificate of the proceedings had before him as required by Section 39 (a) (8) of the Bankruptcy Act (11 U.S.C. 67 (a) (8),) and the Court did not have before it the record necessary to its passing upon said petitions.

(b) The petitioning creditors were afforded no opportunity to be heard in support of said petitions.

Dated this 24th day of September, 1957.

ZENOFF & MAGLEBY,

/s/ By DAVID ZENOFF,

Attorneys for Petitioners. [34]

Notice of Motion

To: Charles J. Ketcham, Bankrupt, and Hawkins & Cannon, His Attorneys; James Blankenship, and Goldwater & Singleton, His Attorneys.

You, and Each of You, Will Please Take Notice that the undersigned will bring the above and foregoing Motion To Vacate and Set Aside Order Denying Petition For Review and Petition To Vacate Sale Under Deed Of Trust on for hearing before this Honorable Court at 10:00 A.M. on the 2nd day of October, 1957, or as soon thereafter as counsel may be heard.

Dated this 24th day of September, 1957.

ZENOFF & MAGLEBY,

/s/ By DAVID ZENOFF,
Attorney for Petitioners.

Acknowledgment of Receipt of Copy Attached. [35]

[Endorsed]: Filed September 25, 1957.

[Title of District Court and Cause.]

ORDER ON MOTION TO VACATE AND SET
ASIDE ORDER DENYING PETITION
FOR REVIEW AND PETITION TO VA-
CATE SALE UNDER DEED OF TRUST

Petitioners' motion to vacate and set aside order denying petition for review and petition to vacate

sale under deed of trust came on to be heard this 8th day of October, 1957, petitioners being represented by Calvin C. Magleby, and no other interested parties appearing in person or by counsel, and the motion being argued, was submitted to the Court for its ruling; and it appearing to the Court that the provisions of Section 39 (a)(8) had not been complied with in that there was not now before this Court the referee's certificate on petition for review; that petitioners could not comply with said section until such time as the Referee did file such certificate; that the facts as now presented to the Court indicate that petitioners should not be prejudiced because of the failure of the Referee to file such certificate; and to that end the order entered by the Court on the 9th day of September, 1957, should be amended; now, therefore, it is

Ordered, that the order of this Court made and entered on the 9th day of September, 1957, be and it is hereby amended and modified as follows: That the paragraph of said [36] order reading

“Ordered, that the prayer of each of the respective petitions be and they are hereby denied”

be stricken, and that in lieu thereof the following paragraph be inserted:

“Ordered, that each of said petitions be, and they are hereby, dismissed without prejudice, it appearing that the Court has no jurisdiction to hear the matters presented in the petitions at this time.”

Dated at Las Vegas, Nevada, this 8th day of October, 1957.

/s/ JOHN R. ROSS,

U. S. District Judge. [37]

[Endorsed]: Filed October 22, 1957.

[Title of District Court and Cause.]

REFEREE'S CERTIFICATE ON
PETITION FOR REVIEW

I, John C. Mowbray, one of the referee's in bankruptcy of the above entitled court, do hereby certify as follows:

1. On the 1st day of March, 1957, the petitioning creditors, M. M. Zenoff, U.S. Tire Supply, Inc., and Commercial Credit Corporation, filed their petition to have Charles J. Ketcham adjudged an involuntary bankrupt.

2. Upon the filing of said petition a general order of reference was made, referring the proceedings to me.

3. On the 8th day of March, 1957, the said Charles J. Ketcham filed his answer to said petition challenging the jurisdiction of this court on the ground that he had neither a residence nor a place of business within this District during the greater

part of the six months next preceding the filing of said petition. Thereafter, M. M. Zenoff, Commercial Credit Corporation and Southwestern Publishing Company, Inc. as petitioning creditors, filed an Amended and Supplemental Petition and a Second Amended and Supplemental Petition, admitting that the said Charles J. Ketcham had neither a residence nor place of business within this District during the greater part of the Six months next preceding the filing of the petition, but alleging that the great majority [38] of the creditors of the said Charles J. Ketcham either resided or had places of business within this District and all, or substantially all of the assets of the said Charles J. Ketcham were located within this District, and praying that jurisdiction of the proceedings be retained in the interest of justice, pursuant to Section 22 (b) of the Bankruptcy Act, as amended by the Act approved July 7, 1952 C. 579, 66 Stat. 424 (11 U.S.C.A. Supp. Sec. 55 b).

4. A hearing on said Petition, Amended and Supplemental Petition, and Second Amended and Supplemental Petition, and the answer of said Charles J. Ketcham was held before me on the 15th day of April, 1957, and oral and documentary evidence was adduced.

5. Upon the hearing of said Petition, Amended and Supplemental Petition, Second Amended and Supplemental Petition and answer, the following question was presented:

Whether, in view of the fact that said Charles J. Ketcham had neither a residence or place of residence within this District during the greater part of the six months next preceding the filing of the original petition this court had jurisdiction of the proceeding and might retain jurisdiction thereof in the interest of justice where substantially all of the bankrupt's assets were located within this District, and the greater number of the alleged bankrupt's creditors either resided or had their places of business within this District.

6. Upon consideration of the law and the evidence, I made an order dismissing the proceedings for want of jurisdiction.

7. The foregoing order was signed by me and filed in my office on the 18th day of June, 1957, and in compliance with [39] Section 29 (a) (9) of the Bankruptcy Act, was transmitted to and filed in the Office of the Clerk of this Court on the 26th day of June, 1957.

8. Thereafter I made an order extending the time within which the said M. M. Zenoff, Commercial Credit Corporation and Southwestern Publishing Company, Inc. might petition for a review of said order to and including the 6th day of July, 1957.

9. Thereafter, to wit on the 6th day of July, 1957, said M. M. Zenoff, Commercial Credit Corporation and Southwestern Publishing Company, Inc. filed herein their Petition for a Review of said order.

10. On the 9th day of August, 1957, I made and filed herein my Findings of Fact and Conclusions of Law.

11. I have heretofore transmitted to the Clerk of this Court and there is now on file in his office

(a) The original Petition to adjudicate the said Charles J. Ketcham an involuntary bankrupt

(b) The Amended Supplemental Petition to adjudicate the said Charles J. Ketcham a bankrupt

(c) The Second and Supplemental Petition to Adjudicate said Charles J. Ketcham an involuntary bankrupt

(d) The Answer of said Charles J. Ketcham

(e) The transcript of the evidence taken before me, and all exhibits introduced in evidence

(f) The order dismissing the proceedings

(g) The order extending the time for filing a petition for review

(h) The petition for review

(i) My findings of fact and conclusions of law

Dated this 30th day of January, 1958.

/s/ JOHN C. MOWBRAY,
Referee in Bankruptcy. [41]

[Endorsed]: Filed February 10, 1958.

In the United States District Court
For the District of Nevada

In Bankruptcy No. 121

In the Matter of

CHARLES J. KETCHAM, dba Lake Motors, and
Studebaker Sales, and Service; and as Stude-
baker-Packard Sales Agency,
Alleged Bankrupt.

ORDER DISMISSING PROCEEDINGS

This matter is a masterpiece of confusion. As it now stands little can be accomplished by a lengthy dissertation of what should have been done, so the Court will confine its remarks to a brief statement of what has taken place, the Court's rulings, and the reasons therefor.

On March 1, 1957, petitioners filed their petition in bankruptcy seeking the adjudication of one Charles J. Ketcham, an involuntary bankrupt. Thereafter a first and supplemental petition and a second amended and supplemental petition were filed. The alleged bankrupt filed an answer. An order was entered by the Referee restraining the Pioneer Title Company from selling certain real property belonging to the alleged bankrupt in which the Title Company was named as Trustee with power of sale in the deed of trust.

Ultimately the Referee heard and determined the issues joined on the petitions and the answer, and on the 18th day of June, 1957, dismissed the peti-

tions, a portion of that [45] order reading as follows:

The Court finds that the respondent, Charles J. Ketcham, is now and has been for more than six months prior to March 1, 1957, a resident of and domiciled within the state of California, and the Court is, therefore, without jurisdiction. That accordingly, said petition should be dismissed with costs.

Accordingly the petitions were dismissed. It nowhere appears that the petitioners on this 18th day of June, 1957, or at any subsequent time to and including the date of the sale of the alleged bankrupt's property under the power of sale contained in the trust deed, which was on July 2, 1957, made any application, to Judge or Referee, for a protective order staying the sale of the property pending a hearing on petition of review from the Referee's order of June 18, 1957, dismissing the petitions.

Section 39(c) of the Bankruptcy Act relating to petitions for review of the Referee's orders, recites in part:

* * * Upon application (for review) of any party in interest, the execution or enforcement of the order complained of may be suspended by the Court upon such terms as will protect the rights of all parties in interest.

At the time of the entry of the Referee's order dismissing the petitions petitioners knew, or should have known, that any and all orders theretofor entered in said proceedings would, and did, fall. And yet they saw fit to stand by and do nothing to the

end that the sale of the trust deed property be delayed until after the review of [46] the Referee's order had been disposed of.

The record indicates that the Title Company sold the property on July 2, 1957. As we see the matter the Title Company was under no restraint at that time. No doubt it was aware of the dismissal of the petitions by the Referee, and was advised by its counsel that it could safely proceed with the sale, as well it might.

On July 6, 1957, petitioners filed their petition for review. It appears to have been filed with the clerk of this Court in the first instance, rather than with the Referee. On this point Section 39(c) reads:

A person aggrieved by an order of a referee may, within ten days after the entry thereof or within such extended time as the court may for cause shown allow, file with the referee a petition for review of such order by a judge and serve a copy of such petition upon the adverse parties who were represented at the hearing. (Emphasis supplied)

This Court is of the present opinion that the petitioners did not comply with the requirement that the petition for review be filed with the Referee, in which event the matter of review was never properly before this Court. But here is where, so far as the Court is concerned, utter confusion begins. But, to give petitioners the benefit of the doubt, the Court will assume that the petition for review was properly filed with the Referee in the first instance.

In any event, the Referee's certificate on review was not filed in this Court until January 30, 1958. So, when the hearing on (1) the petition for review, and [47] (2) petition to set aside sale came on for hearing and ruling by the Court on September 9, 1957, the Court then, and properly, we think, entered its order denying the prayer of each of said petitions. Petitioners then filed their motion to vacate and set aside the order of this court entered September 9, 1957, and pursuant to that motion the Court, on October 8, 1957, amended its September 9 order to read as follows:

Ordered, that each of said petitions be, and they are hereby, dismissed without prejudice, it appearing that the Court has no jurisdiction to hear the matters presented in the petitions at this time.

This order was based on the fact that (1) the petition for review had not been filed in the first instance with the Referee, but with the Court instead, and, (2) upon the further ground that there was not then before the Court the Referee's certificate on review. Until the certificate has been filed with its accompanying papers there is no record upon which the Court can pass.

We heard nothing more of this matter until February 10, 1958, when there was filed with the clerk of this Court the Referee's certificate on review together with attached documents as required by Section 39(a)(8). It is to be noted here that even though the two petitions hereinabove referred to were dismissed without prejudice by the Court's

order of October 8, 1957, no further petition has been filed in this matter. In short, petitioners have done nothing more than ask that the corpse of their original petition for review be exhumed and revived. As we see the situation life once being extinct we should let it rest in peace. [48]

In any event the matter has again come upon our calendar, and it is indicated that the matter of a further hearing on the petition to review has been set for May 4, 1959, at which time this Court will again be sitting at Las Vegas. This last continuance was entered by the Court to the end that "all interested" parties might appear, or at least file their points and authorities, in support or opposition to the petition to review. Our order of January 23, 1959, contained the following:

Further Ordered, that a copy of this order be forthwith served by the Clerk upon the interested parties herein mentioned to the end that they may, within fifteen days from the date hereof, file their authorities in support of whatever position they desire to take (1) in connection with the petition for review, and (2) the petition to vacate sale.

Evidently as the result of the clerk's notice counsel for the alleged bankrupt, Ketcham, filed their memorandum in support of the Referee's order dismissing the original petitions. The fifteen day period having elapsed and no other memos having been filed, the Court is of the opinion that since its present ruling will be based solely upon the record before us and the applicable provisions of the

Bankruptcy Act, there is no need for delaying until May 4 to enter its order herein. This is particularly true inasmuch as nothing further can be presented by way of proof, and any oral argument would be futile in the face of the record.

Based upon the foregoing statement of fact, and accompanying comment, the Court concludes as a matter of [49] law that as to the petition for review there is nothing now before the Court, the original petition having been dismissed on October 8, 1957, and no further or other proceedings having been taken on the part of the petitioners. This disposes of the matter.

We dismiss the proceedings so far as they relate to the petition to vacate sale for the same reason, and if it was properly before us now we should have to rule against petitioners in any event because of their own failure to seek, and obtain, a protective order pending their attempted review.

In dismissing all of these proceedings, as we propose now to do, the Court is not unmindful that there may be, without now identifying them, certain legal questions lurking in the background. However, in view of the record before us we do not reach them at this time.

Now that this case has been once again disposed of, re-interred so to speak, may its bones rest now in tranquil repose. To counsel, *pax vobiscum*. It is, therefore,

Ordered, that all proceedings now pending in this matter be, and they are hereby, dismissed with prejudice.

Dated at Carson City, Nevada, this 26th day of February, 1959.

/s/ JOHN R. ROSS,
U. S. District Judge. [50]

[Endorsed]: Filed February 26, 1959.

[Title of District Court and Cause.]

NOTICE OF APPEAL

M. M. Zenoff, Commercial Credit Corporation and Southwestern Publishing Company, Inc., the petitioning creditors in the above-entitled cause hereby appeal to the United States Court of Appeals for the Ninth Circuit on the order of the above-entitled Court entitled "Order Dismissing Proceedings" filed February 26, 1959, a notice of the entry of which was made in the bankruptcy docket of the above-entitled court on the 3rd day of March, 1959, and service of which was made by mail on the same day.

Dated this 3rd day of April, 1959.

/s/ CALVIN C. MAGLEBY,
Attorney for Appellants. [52]

[Endorsed]: Filed April 3, 1959.

ies of orders entered on the minutes or dockets of this court, in the above entitled case and that they constitute the record and supplemental record on appeal herein as designated by the parties.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court this 6th day of January, 1960.

[Seal] OLIVER F. PRATT,
 Clerk,

/s/ By FRANCES BULLOCH,
 Deputy. [9]

In the District Court of the United States
In and For the District of Nevada

No. 121 LV

In the Matter of

CHARLES J. KETCHAM, dba Lake Motors and
Studebaker Sales and Service; and as Stude-
baker Car Sales and Supplies, Bankrupt.

TRANSCRIPT OF PROCEEDINGS

Be It Remembered that the above-entitled matter came on regularly for hearing before the United States District Court, District of Nevada, Las Vegas, Nevada, on Monday, the 15th day of April, A.D. 1957, before Hon. John C. Mowbray, Referee in Bankruptcy, with the following proceedings had:

Referee: This is the time set for the matter of Charles J. Ketcham, doing business as Lake Motors and as Studebaker Sales and Service, and as Studebaker Packard Sales and Service, Bankrupt. In Bankruptcy No. 121. This is the time set for the trial on the Petition [1]* of M. M. Zenoff, of the City of Las Vegas, County of Clark, State of Nevada, U. S. Tire Supply, Inc., a Nevada Corporation, and Commercial Credit Corporation, a Maryland Corporation, having a place of business in Las Vegas, Nevada, praying that Charles J. Ketcham be adjudged by this Court to be a bankrupt within the purview of the Bankruptcy Act.

The record should show that Charles J. Ketcham filed an Answer to the Petition on March 8, 1957, in these proceedings. The petition of the Petitioning Creditors recites, in substance, that Ketcham has been doing business as Lake Motors and as Studebaker Sales and Service, and as Studebaker-Packard Sales and Service rather, Sales Agency, and has his principal place of business within the jurisdiction of this Court. That Charles J. Ketcham owes debts in the amount of one thousand dollars or over, and is now a wage earner or farmer, that the Petitioning Creditors of Charles J. Ketcham have claims against him, as to liabilities, unliquidated, in the amount in the aggregate in excess of the values of the securities held by them, to be more than five hundred dollars, that the claim of Peti-

* Page numbers appearing at bottom of page of Original Transcript of Record.

tioner Commercial Credit Corporation is secured by certain liens, includes an attachment lien upon certain property of Ketcham but the amounts claimed exceed the value of the securities; that Mr. Ketcham, within four [2] months last past committed an act of bankruptcy, to-wit, on the Fourth day of December, 1956, he did permit one of these creditors, namely, Young Electric Sign Company, new legal proceedings, to obtain a lien upon certain of his properties, namely, all of that real property in the County of Clark, described in the Petition, and has failed to discharge or vacate said lien within thirty days of the date of said lien. And the Petitioning Creditors hereby claim that that certain action now pending in the Eighth Judicial District Court, being No. 77,103, in which Young Electric Sign Company is the Plaintiff, and Charles J. Ketcham, is the Defendant, that a Writ of Attachment was issued on the fourth day of December, 1956, and was levied upon all the right, title and interest of Charles J. Ketcham in and to the real property described in paragraph four. That the Writ of Attachment has not been vacated or discharged. And the Petition alleges—rather, the Bankrupt in his Answer alleges that he is now and has been for more than six months prior to March 1, 1957, a resident of and domiciled in the State of California, that his principal place of business has been in the state of California. He denies, in paragraph two, of doing business as Lake Motors and as Studebaker Sales and Service, and as Studebaker-Packard Sales Agency, here, or elsewhere

within this District, within the six months prior to March 1, 1957. He admits [3] all the allegations of paragraph two. The alleged bankrupt denies that the petitioning creditors have provable claims against him fixed as to liabilities, unliquidated, as to the amounts as alleged in paragraph three, that they are excessive. The respondent alleges to be indebted to M. M. Zenoff—and so on. Now, will you state your appearances for the record, please?

Mr. Zenoff: David Zenoff, of Zenoff and Magleby, for the Petitioning Creditor, Commercial Credit.

Mr. Cannon: Howard W. Cannon, of Hawkins and Cannon, for Charles J. Ketcham. If your Honor please, by way of information, I might point out to the Court that on April thirteenth there was an Amended and Supplemental Petition served on us in this matter. Now, I presume it was probably filed on the same day. Mine doesn't have the filing date. Of course, we do not as yet have an Answer to file to that Amended and Supplemental Petition, and I believe the issue should be clarified as to whether we are to proceed on the basis of the Amended and Supplemental Petition, or on the basis of the original Petition. If we are to go on ahead on the Amended Petition, I, of course, do not have an Answer on file, and would naturally request time to examine that matter, and place an Answer on file prior to litigating the matters therein. I merely submit that to the Court so that the Court might have all of the information before [4] it.

Referee: The record should show that Mr. Zenoff has just handed me the original of that Amended and Supplemental Petition that you—to which you have just referred. Do you want to file it?

Mr. Zenoff: Yes. This is the first opportunity we have had to do so, and I might augment Mr. Cannon's remarks, that the Petition is changed from the original Petition in only one respect, that we allege a credit for one of the creditors, as different than in the original Petition. After the filing of the original Petition we were advised there was probably—that there was a probability that one of the Petitioners had been paid. The U. S. Royal Tire Company. We do not know, even at this point, when they were paid. Whether it was before or after the filing of the Petition. However, the—all the Supplemental Petition does, which was filed, merely sets forth a different creditor, replacing U. S. Royal Tire Company.

Referee: Well, gentlemen, *who* are we going to proceed? You have got a Petition on file. You have an Answer, and we are at issue. Now, the Court has just been handed, for filing, an Amended and Supplemental Petition. There is nothing in the record except Mr. Cannon's statement that it has been served on them. When was it served? [5]

Mr. Zenoff: Last Saturday, the 13th.

Referee: The 13th. And now he has had no opportunity to Answer this Petition, so we are not at issue.

Mr. Zenoff: It is perfectly agreeable that a continuance to this matter be granted. There is only so far one important issue that should come before the Court today. That is the proof of testimony I would like to bring out, that there is a valuable asset existing in Clark County, owned by the alleged bankrupt. There is a foreclosure pending on that asset. It consists of a piece of property in the city of Henderson of great value, against which there is an encumbrance of approximately twenty-four thousand dollars. The testimony and proof would bring out that the minimum value of that property would be seventy-five thousand dollars and more. There will be an objection on the part of Mr. David Goldwater, who will appear on behalf of the foreclosing party to try to dissolve the restraining order that this court has issued. We seek to preserve that asset for the benefit of the—either the creditors—if our allegations in the petition are proved, or to give the alleged bankrupt an opportunity to liquidate his creditors by realizing the full value of that asset.

Referee: Well, let's direct our attention [6] first to the petition and the answer. What are your feelings on this matter, Mr. Cannon?

Mr. Cannon: Well, your Honor, if your Honor please, based on Mr. Zenoff's statement, if it is a fact that the only additional problem at this time is that there is one creditor added here, we would be willing to proceed, if the Court so desires, on the basis of if something develops insofar as that creditor is concerned that we may not be able to an-

swer, we might have to have a continuance on that point. In the alternative, we have no objection to a continuance to a later date, but we likewise agree that an order should be placed in effect to protect us as well as protect the other creditors, if there is to be a continuance for some extended time in the future. Now, we have and are prepared at this time to litigate the essential items here at this time, one, whether or not the Court has jurisdiction over this alleged bankrupt at all, and secondly, whether or not he was in fact insolvent. Because, if either of those questions are answered, one, that he is not a resident and was not within the preceding six months, or, that he is not insolvent, then in either of those events, of course, that would end the procedure.

Referee: Well, I would rather have these points cleared before we proceed. The only question is this, you see, if the Court determines that this [7] gentleman is not a bankrupt, I have no authority to continue that order against Mr. Goldwater's creditors, you see. And I think the law is to the effect that under Section Eleven—"a suit which was brought * * * until his question of discharge is determined by the court having a hearing." But, here he has a lien.

Mr. Goldwater: In the event the Pioneer Title Insurance and Trust Company, who are the trustees under a deed of trust, James Blankenship, who is the assignee of it, or the beneficiary under the deed of trust, or, I should say, the possessor for value——

Referee: How long a continuance would be necessary to file an answer on this matter?

Mr. Zenoff: Could I consult with Mr. Cannon a moment or two?

(Off record.)

Mr. Cannon: If your Honor please, I am just informed that the date of the supposed foreclosure sale is tomorrow morning. Now, if that is a fact, we certainly would prefer to proceed at this time and take our chances on it, whether or not we would be required to file an additional answer, to litigate the main issues, unless the Court would feel that it could and would issue a further order. If an order is to be issued, then we have no objection to going along on a continuance so that we might examine this petition and see whether an answer is [8] required.

Referee: Well, your answer filed in these proceedings is in response. Mr. Zenoff has represented to the Court that the amended and supplemental petition varies only in the fact that the Southwestern Publishing Company, Inc., is substituted for U. S. Tire Supply, Inc. Is that correct?

Mr. Zenoff: That is correct.

Referee: Well, in the answer, in paragraph four, the respondent denies the petitioners claim as to liability as to alleged—as to the alleged claim in paragraph three of said petition, that he is indebted to M. M. Zenoff in the sum of two hundred eight dollars and thirty cents—well, are you indebted to Southwestern Publishing Company, Inc.?

Are you able to plead at this time regarding that matter?

Mr. Cannon: Your Honor, may we have just a moment, here?

(Off record.)

Mr. Cannon: Your Honor, we would admit that we are indebted to the Southwestern Publishing Company, Inc., in the sum of one hundred sixty-seven dollars and twenty-five cents.

Referee: Well, then, would it be agreeable to counsel that the answer of the alleged bankrupt to the original petition may be considered as the [9] answer of the bankrupt to the amended and supplemental petition, except as to paragraph four, which should be amended to contain or to consist of, after the conclusion of the said paragraph, the following words: 'and Southwestern Publishing Company, Inc., in the sum of one hundred sixty-seven dollars and twenty-five cents'—is that agreeable?

Mr. Zenoff: No objection. Satisfactory with me.

Mr. Cannon: That is satisfactory, your Honor.

Referee: Well, then, that will be the order and we will proceed, then, on the supplemental and amended petition, and the answer of the alleged bankrupt to same, as just stipulated to by the counsel for both parties.

Mr. Zenoff: Mr. Ketcham, I would like to call you adversely. Please take the stand over there.

CHARLES J. KETCHAM

having been first duly sworn, called as a witness on behalf of petitioner adversely, took the stand and testified as follows: [10]

Direct Examination

Q. (By David Zenoff): Will you please state your full name?

A. Charles Joshua Ketcham.

Q. Are you familiar with the entity of Lake Motors? A. Yes.

Q. What were — what was the relationship of Lake Motors to yourself, if any?

A. Well, solely owned proprietorship.

Q. And are you familiar with the Studebaker Sales and Service?

A. No. Well, that isn't the name style.

Q. What was the name style in which you did business in Las Vegas, Nevada?

A. Charles J. Ketcham, authorized dealer, Studebaker-Packard.

Q. And where did you operate such a business, Mr. Ketcham?

A. Seventeenth and Fremont. 1620 East Fremont.

Q. That is in Las Vegas, Nevada? [11]

A. Yes.

Q. For what period of time, Mr. Ketcham?

A. April 10, 1952 until November 15, 1955.

Q. And were you in that period of time residing in Las Vegas, Nevada? A. I was.

(Testimony of Charles J. Ketcham.)

Q. Now, in the operation of that business, Mr. Ketcham, did you incur certain obligations to business creditors? A. I did.

Q. I show you a typed list of creditors and ask you if substantially that is the list of creditors to which you are now obligated by reason of the operation of your Studebaker agency in Las Vegas, Nevada? A. Yes, it is.

Q. I would like to have this marked for identification. And I move that Exhibit One be introduced into evidence, your Honor.

Referee: Any objections?

Mr. Cannon: No objections.

Referee: Then Petitioner's Exhibit No. 1 will be so admitted as Petitioners Exhibit No. 1.

Mr. Zenoff: Mr. Ketcham, [12] during the course of the operation of your Studebaker Sales Agency, did you have occasion to do business so to speak with the Commercial Credit Corporation?

A. I did.

Q. What was the relationship of the Commercial Credit Corporation to the operation of your business? A. They purchased paper from me.

Q. Do you recall whether or not there were any signed agreements executed by yourself to the Commercial Credit Corporation with respect to guarantees? A. Yes.

Q. And is it your testimony that you did so execute a guarantee contract with the Commercial Credit Corporation? A. Yes.

(Testimony of Charles J. Ketcham.)

Q. Now, explain, if you will, and briefly, if possible, the nature of such a contract that you executed.

A. I purchased, or I negotiated contracts between potential automobile purchasers and myself, which were sold to Commercial Credit Corporation.

Q. Those conditional sales contracts were sold by you to Commercial Credit, is that right?

A. Yes, they purchased them. [13]

Q. And to which you guaranteed each conditional sales contract. Is that correct?

A. Yes. Conditionally they were guaranteed.

Q. Now, in the event that one or more of those conditional sales contracts fell into default, what would be your liability under those contracts?

A. Upon notice to pay off the remaining balance and take possession of the collateral.

Q. Now, did you, in fact, or were you, in fact, called upon by Commercial Credit Corporation, to honor the guarantee executed by you to them?

A. Not after November fifteenth.

Q. Of what year? A. 1955.

Q. Well, prior to November 15, 1955, were there obligations incurred by you to Commercial Credit Corporation, by reason of your guaranteed contract? A. Yes.

Q. Do you know how much that obligation is at this time?

A. No, I haven't any idea what it is at this time.

(Testimony of Charles J. Ketcham.)

Q. Well, do you know it to be in excess of one thousand dollars? [14] A. Yes.

Q. Do you know it to be in excess of twenty-five thousand dollars? A. No.

Q. Do you know it to be in excess of twenty thousand dollars? A. No.

Q. Well, will you tell the Court, to the best of your recollection, the amount that you feel that you now are obligated to Commercial Credit for?

A. All I know is that it would be reasonable for me to assume it was in excess of one thousand dollars. How much beyond that I haven't any idea.

Q. Now, Mr. Ketcham, what are your assets in Clark County, Nevada?

A. A piece of property located in Henderson, Nevada.

Q. Is that real property?

A. That is real property.

Q. What is your estimate of the value of that property?

A. Probably around eighty-five thousand dollars at today's market value.

Q. What did this property consist of? [15]

A. A new car building, automobile building, and land, improved.

Q. And what other assets, if any, do you own in Clark County, Nevada?

A. Stock in Twin Lakes Shopping Center, Inc., one hundred eighty-seven and a half shares, I believe. Stock in Sky Haven Airport, Incorporated, approximately twenty-two percent of the outstand-

(Testimony of Charles J. Ketcham.)

ing stock. Various oil and gas leases in the County of Clark. A portable office building located at Seventeenth and Fremont known as C and H Motors. A lease deposit and leasehold assets on the same location as the portable office building. Reserve accounts in the Bank of Nevada and in the First National Bank of Las Vegas, in the aggregate sum of approximately ten thousand dollars.

Q. As to the encumbrances existing against the property in Henderson, Nevada—tell the Court, if you will, the nature of those encumbrances?

A. It is a first trust deed originally obtained by the Bank of Las Vegas on that property.

Q. What is the balance existing now, if you know?

A. Well, interest and principal, and various charges, make the aggregate sum close to twenty-five thousand dollars.

Q. Now, as additional security, is it [16] not a fact, Mr. Ketcham, that the bank, or its assignee, holds the stock in the Twin Lakes Shopping Center?

A. Yes, that is true.

Q. Does it have any other security of the assets which you have set forth?

A. No.

Q. That is the only asset?

A. That is all.

Q. Now, Mr. Ketcham, in the original petition we have alleged that you owed the U. S. Royal a certain sum of money.

A. Yes.

Q. Has that debt been paid?

A. Yes, it has.

(Testimony of Charles J. Ketcham.)

Q. Do you recall when it was paid?

A. Yes, I have it in my briefcase. I don't remember the exact date.

Q. Well, do you recall whether it was before or after the filing of the petition?

A. I believe it was on the same date or the day after; it was very close to that time. It was after the petition was filed.

Q. I see. You are aware, are you not, Mr. Ketcham, that there is a foreclosure pending, instituted by the Bank of Las Vegas, or its assignees, as to the deed of trust to which you have testified? [17]

A. Yes, I am aware of that.

Q. And you are informed that the foreclosure sale is set for April the 16, 1957, is that correct?

A. Yes.

Q. Now, where are your other assets, if any, Mr. Ketcham, and of what do they consist?

A. I have an automobile, a personal car, and a home, in California. Those are the only other assets.

Q. What is the value of your home in California?

A. Oh, about eighty-five hundred.

Q. Eighty-five hundred, you say?

A. Yes.

Q. Are you speaking of net equity value?

A. No, that is the gross value of it, and it is offset by a mortgage of approximately seventy-eight hundred.

(Testimony of Charles J. Ketcham.)

Q. Now, the list of creditors that I have submitted to you, and which is marked Plaintiff's Exhibit 1, does that list reflect most, or all, of your creditors?

A. No, the list you showed me reflects only the small creditors. [18]

Q. Where do the bulk of the creditors on the list that I submitted to you, reside or do business?

A. In Nevada.

Q. And this represents the smaller creditors. You say that you have some larger creditors, too?

A. I have other claimants, yes.

Q. And where do they reside or do business?

A. Well, they have branches here.

Q. Here in Las Vegas, Nevada? A. Yes.

Q. Where do you call your residence now, Mr. Ketcham?

A. 3432 LeRoy Street, San Bernardino, California.

Q. How long have you resided there?

A. Since December the 7th, 1955.

Q. Where did you reside before you went to San Bernardino?

A. 1235 South Ninth Street, Las Vegas, Nevada.

Q. Are you familiar, Mr. Ketcham, with a claim of the Young Electric Sign Company against yourself? [19] A. I am.

Q. Are you, or were you aware of the fact that the Young Electric Sign Company commenced proceedings against you and levied a writ of attachment? A. I am.

(Testimony of Charles J. Ketcham.)

Q. And did you ever take steps to release that writ of attachment in the courts of Las Vegas?

A. Not in the courts, no.

Q. Nothing further, Mr. Ketcham, at this time.

Referee: Mr. Ketcham, just a question I would like to ask you here. In December of last year, 1956, can you tell me at this time what were your outstanding obligations?

A. Well, the ones which I acknowledge as being debts consist of approximately ninety-five thousand dollars.

Referee: And can you tell me what would be an approximation of your assets at that time?

A. Approximately one hundred twenty-five thousand.

Referee: Could you state to the Court at that time, whether, on or about December 4, 1956, or thereabouts, if your property were sold, all of [20] it, at a fair valuation, would that have been sufficient to pay your debts of ninety-five thousand?

A. Yes.

Referee: Could it have been sold at that time?

A. That I don't know. I hadn't been in the picture long enough at that time to have made an answer.

Referee: Well, why did you default in this trust deed?

A. I didn't default. It was in a divorce settlement that it was awarded or was surrendered to my ex-spouse, and she defaulted in that interim, and it was subsequently re-assigned to me to con-

(Testimony of Charles J. Ketcham.)

tinue the liquidation and satisfy the creditors. That was in December of 1956.

Referee: Nothing further.

Mr. *Ketcham*: I would like to re-examine Mr. Ketcham.

Redirect Examination

Q. (By David Zenoff): Mr. Ketcham, you stated your liabilities were ninety-five thousand. Of those, are you including Commercial Credit Corporation for one thousand? [21]

A. No. An arbitrary amount in excess of one thousand.

Q. And do you feel that when you gave the Court the figure of ninety-five thousand, that that included all that you would owe the Commercial Credit Corporation? A. Yes.

Q. And when you stated to the clerk that your assets had a value of one hundred twenty-five thousand, were those the assets to which you have already testified? Or rather, when you stated to the Court? A. Yes.

Referee: Then, that is your equity in those assets?

A. Well, let's say that is the assets as opposed to liabilities.

Referee: If you were to liquidate those assets, it is your statement to the Court that you would end up with one hundred twenty-five thousand dollars, approximately?

(Testimony of Charles J. Ketcham.)

A. Right. Then the proceeds would be used to pay off the ninety-five thousand.

Q. (By Mr. Zenoff): Well, Mr. Ketcham, you made an effort to sell the Henderson property, didn't you? [22] A. Yes.

Q. Have you ever had a concrete offer on that property?

A. Not a concrete offer, no.

Q. Nobody has submitted actual cash money to you, is that correct? A. No.

Q. You have tried on many occasions to sell this property, have you?

A. Yes, and I was hampered by the proceedings that were in effect.

Q. Well, you say proceedings—there were several going on on?

A. Well, by all of them.

Mr. Zenoff: Nothing further of this witness.

Referee: I just asked that question, Mr. Zenoff, because of your petition. You allege that he was insolvent at the time that he permitted the attachment to be attached to his property. And subparagraph nineteen, section one, says, the bankruptcy act, defines insolvency, and says: "a person wherein the aggregate of his property * * * not be sufficient in amount to pay his debts."

Mr. Zenoff: That is correct.

Referee: All right. That is all. [23]

(Witness Ketcham excused.)

BASIL HILLIS

having been first duly sworn, called as a witness on behalf of petitioner, took the stand and testified as follows:

Direct Examination

Q. (By David Zenoff): Would you state your name, please? A. Basil Hillis.

Q. And what is your occupation?

A. I am manager and business district representative for Commercial Credit Corporation in Las Vegas.

Q. How long have you occupied that position?

A. I have been with the company since 1935. I have been up here since the War, since 1946, in that capacity.

Q. In that capacity have you handled the business negotiations and transactions between Commercial Credit Corporation and Charles J. Ketcham?

A. I have. [24]

Q. And did you at all times maintain personal supervision of that account? A. I did.

Q. And are you familiar now with the condition of that particular account with Commercial Credit Corporation? A. I am.

Q. And what is that particular condition at this time?

A. In connection with the amount owing Commercial Credit?

Q. Yes.

(Testimony of Basil Hillis.)

A. I have figures as of eleven-thirty Saturday of an amount of forty-nine thousand, nine hundred fifty-one dollars and fifty cents.

Q. How was that figure arrived at, Mr. Hillis?

A. In the agreement between Commercial Credit Corporation and Charles J. Ketcham, those contracts in default normally are returnable to the dealer, and the balance or the payoff collected from him, after the account closed. We had no dealer to whom we could return the cars. We obtained bids, sold them for a high bid. The difference between the sale of the automobile and our balance, was charged off. These are the accumulated charge-offs. [25]

Q. And therefore the figure you have just testified to is the net loss figure to Commercial Credit Corporation, after liquidating the repossessed automobile and applying the proceeds to the Ketcham account. Is that true?

A. That is correct. Yes, sir.

Mr. Zenoff: Nothing further of this witness.

Cross Examination

Q. (By Howard W. Cannon): Mr. Hillis, in that sum of forty-nine thousand, nine hundred fifty-one dollars and fifty cents, how much of that is represented by attorneys' fees?

A. That I do not know without checking back, sir.

Q. Well, you have attorneys' fees computed in there, have you not?

(Testimony of Basil Hillis.)

A. I believe that one check has been drawn to the attorneys.

Q. And in a very substantial amount?

A. I believe in the neighborhood of five hundred, if I am not mistaken. [26]

Q. And this is the only item that represents attorneys' fees? A. That is.

Q. How much of that represents charges in connection with repossessions?

A. That I would not know.

Q. Well, is it a very substantial amount?

A. I wouldn't think so.

Q. Now, did you, in accordance with the terms of your contract, ever submit to automobiles to Mr. Ketcham within the ninety-day period, after default? A. That I cannot say.

Q. Well, now, you know, as a matter of fact, whether you did or didn't notify Mr. Ketcham within ninety days, do you not, Mr. Hillis?

A. I mean, it was discussed on a many occasions, sir, when Mr. Ketcham was in my office. At one time it was suggested, I believe, that some of the cars be turned over to Mr. Ketcham for liquidation. Nothing ever happened to that.

Q. Do you have a copy of your contract with Mr. Ketcham?

A. I think my attorney has, sir.

Q. Mr. Hillis, I hand you what has been handed to me by your counsel, three sheets, purportedly the [27] agreement to which you have testified. Is that

(Testimony of Basil Hillis.)

the agreement that you entered into with Mr. Ketcham?

A. This is a copy of the agreement.

Q. And the two additional sheets, are they likewise a part of the agreement? A. Yes.

Q. May I have this marked for identification? Counsel, may I offer it at this time? We offer that at this time.

Mr. Zenoff: No objections.

Referee: All right, then, this certain agreement, or copy of an agreement, entitled Reserve Agreement, dated April 17, 1952, between Charles J. Ketcham and Commercial Credit Corporation, will be admitted as the alleged Bankrupt's Exhibit A.

Q. (By Mr. Cannon): Now, Mr. Hillis, you are aware of a provision in the agreement whereby Mr. Ketcham should be notified within ninety days after default, are you not?

A. I believe it states so.

Q. And may I ask whether or not you did notify Mr. Ketcham of the defaults in these particular transactions within ninety days after the default occurred?

A. Not to my knowledge, sir, in writing. [28]

Q. And you have no written documents that would evidence a notification given to Mr. Ketcham? A. Not to my knowledge.

Q. And there is presently on file a lawsuit wherein your company and Mr. Ketcham are litigating the amounts due under the so-called reserve agreement? A. That is right.

(Testimony of Basil Hillis.)

Q. And that matter has not been disposed of?

A. No, sir.

Q. And now, Mr. Hillis, how were these cars actually sold by your company?

A. When we were advised to take possession of the cars, or for down payment of the conditional sales contract, we would obtain three bids, and dispose of the cars to the highest of the three bidders. We retained our folders or records and we were—our accounts—were audited by Mr. Ketcham's representatives some months ago.

Q. Now, were those bids you obtained from used car dealers, or were they from individuals?

A. See, we are not in the retail business at all. They were from used car dealers.

Q. In other words, you made no attempt to sell the automobiles on the open market?

A. No. [29]

Q. You are aware of the period of time when Mr. Ketcham went out of business? A. Yes.

Q. At that time how much of a reserve did Mr. Ketcham have on credit with your company?

A. I don't know, offhand.

Q. Well, isn't it a fact that it was in excess of one hundred thousand dollars?

A. I would say so.

Q. And do you understand then that your company used up all of the one hundred thousand dollars reserve, and thereafter sustained a loss of forty-nine thousand, nine hundred fifty-one dollars and fifty cents? A. In addition to.

(Testimony of Basil Hillis.)

Q. In addition to? In excess of one hundred thousand dollars? A. That is right.

Q. Over what period of time, Mr. Hillis, did you use up that reserve?

A. About a year and a half, approximately. Pretty close.

Q. When you say a year and a half, that refers to the one hundred thousand reserve, or in excess of one hundred thousand, and also the forty-nine thousand accumulation? [30]

A. That is right.

Q. And is it your contention that any person other than yourself or any representative of your company gave Mr. Ketcham notice within the ninety-day period of default as required in your agreement with him? I refer to a notice in writing.

A. I didn't personally, sir, and to the best of my knowledge no one else did.

Q. Nothing further.

Redirect Examination

Q. (By David Zenoff): Mr. Hillis, did the Commercial Credit Corporation have a license to sell automobiles at retail in the state of Nevada?

A. No, we do not.

Q. And in addition to Mr. Ketcham's account, you have other used dealer accounts in Las Vegas, Nevada? A. Yes, we do.

Q. Now, have you had any conversations with Mr. Ketcham, either before or after the filing of this petition in bankruptcy concerning the indebted-

(Testimony of Basil Hillis.)

ness owed by Mr. Ketcham to Commercial Credit?

A. When was the bankruptcy filed, sir? [31]

The Referee: The petition was filed on March 1, 1957, two thirty-five p.m.

A. Not since March of 1957, no, sir. This is the first time I have seen Mr. Ketcham for several months.

Q. (By Mr. Zenoff): Had you had conversations with Mr. Ketcham concerning this indebtedness prior to the filing of the bankruptcy?

A. Yes, sir.

Q. Where did the conversations take place?

A. At my office.

Q. Do you have—did you have one conversation or more than one conversation?

A. More than one.

Q. Do you recall any one particular item regarding the amount owing by Mr. Ketcham to Commercial Credit Corporation?

A. Not particularly, no sir, not any one particular item.

Q. Well, where did your conversations take place? In your office? A. Yes.

Q. Who was present?

A. Myself and Mr. Ketcham.

Q. What did Mr. Ketcham say to you in [32]—with respect to the obligation then to the Commercial Credit Corporation?

Mr. Cannon: Objected to as too indefinite as to the time and place.

(Testimony of Basil Hillis.)

Referee: Will you fix the time and place, Mr. Hillis?

A. No, I cannot, exactly, sir.

Referee: Approximately, sir?

A. 1956.

Referee: Could you fix it any better than that?

A. Not for sure, no, sir.

Mr. Zenoff: Well, can you remember whether or not Mr. Ketcham was still in business operating the Studebaker Sales?

A. No, Mr. Ketcham was not in business at that time at all.

Q. And how long, if you remember, approximately, had he been out of business, when you first discussed the Commercial Credit Corporation's obligations?

A. Probably four or five months, sir.

Q. And did you ever have any conversations with Mr. Ketcham subsequent to that first conversation? [33]

A. Yes, I had.

Q. And about how long after the first conversation, was this?

A. Oh, possibly a month or maybe six weeks.

Q. Did you ever have any conversations after that?

A. Yes, I had.

Q. And relating to time, about when did you have such conversations?

A. In the Fall of last year.

Q. In the Fall of 1956?

A. In the Fall of 1956.

(Testimony of Basil Hillis.)

Q. Did you ever have a conversation with Mr. Ketcham subsequent to that conversation?

A. Well, I don't believe I have seen Mr. Ketcham since before Christmas.

Q. Well, then, relating to that conversation you made in the Fall of 1956, where did that conversation take place? A. At my office.

Q. And who was present?

A. Mr. Ketcham and myself.

Q. And what was said by Mr. Ketcham to you regarding the obligation of Mr. Ketcham to the Commercial Credit Corporation? [34]

A. He acknowledged the obligation and assured me that Commercial Credit Corporation would not take a loss.

Q. And did he acknowledge the obligation to any particular amount?

A. I believe the amount was discussed at that time as to what it was, but the exact amount I don't know.

Q. Well, can you give the Court, to the best of your recollection, the approximate figure?

A. Approximately in the neighborhood of twenty-five thousand dollars.

Q. Do you recall that it was discussed in that amount, or the approximate figure?

A. Yes. As I remember it, sir, each time that I saw Mr. Ketcham we would discuss the losses. After all, my records were available to Mr. Ketcham.

Mr. Zenoff: Nothing further of Mr. Hillis.

Referee: Well, if you say you discussed a loss

(Testimony of Basil Hillis.)

of approximately twenty-five thousand dollars, in all of these conversations, why has the loss suddenly jumped to forty-nine thousand, nine hundred fifty-one dollars and fifty cents?

A. Losses since that time. [35]

Referee: If I recall your testimony, I may be in error on this, you testified you had a conference with the alleged bankrupt just before Christmas in your office?

A. Well, I haven't seen Mr. Ketcham since just before Christmas. I don't know just when it was.

Referee: You saw him in the Fall of last year?

A. Yes, in the Fall of last year. I would say October or November.

Referee: And at that time you discussed the obligation?

A. Yes, that is right. The condition of the account.

Referee: At that time it was fixed at approximately twenty-five thousand?

A. I think twenty-five thousand. Maybe thirty thousand.

Referee: That's all. I have nothing further.

Recross Examination

Q. (By Howard W. Cannon): Do I understand, then, according to [36] your testimony, the difference, in excess of twenty-five thousand dollars, has occurred since October or November of 1956?

A. I think that is right, sir.

Mr. Cannon: Nothing further.

(Witness Hillis excused.)

FRANKLIN T. MORRELL

having been first duly sworn, called as a witness on behalf of the petitioner, took the stand and testified as follows:

Direct Examination

Q. (By David Zenoff): Would you state your name, please?

A. Franklin T. Morrell.

Q. And what is your occupation?

A. Real estate broker.

Q. Where are you located?

A. 42 Water Street, Henderson, Nevada.

Q. How long have you been a real estate [37] broker in Henderson, Nevada?

A. Four years.

Q. Are you familiar with property values in Henderson, Nevada? A. Yes, sir.

Q. And are you familiar with the property of Mr. Ketcham's? A. I am.

Q. What is your opinion as to the market value of that property?

A. I believe a fair market value of that property would be about seventy-eight thousand dollars.

Q. You, in fact, have been the agent with whom the property has been listed for sale, is that correct, Mr. Morrell?

A. I have been working on it, not from the point of view of an exclusive, but I have been approached by Mr. Ketcham, and am working on it, on an open listing, yes.

(Testimony of Franklin T. Morrell.)

Q. Now, how long ago has it been since you first started to work on the sale of that particular property?

A. That goes back prior to the time that Mr. Ketcham reacquired the property. I was working on it during the time when Mrs. Ketcham at that time owned the property. [38]

Q. Have you at any time since you first started working on it been able to produce a ready sale, one that could be consummated by the payment of cash down, or by note, or otherwise? A. No.

Mr. Zenoff: Nothing further.

Cross Examination

Q. (By Howard W. Cannon): Mr. Morrell, why weren't you able to produce a ready purchaser?

A. Well, at that time the price, the asking price, was much higher than what any figure that has been mentioned here today was, and I assume for that reason, why, I was unable to do that.

Q. Was that also by reason of the fact that there was litigation pending involving the property?

A. Not to my knowledge. It really had never reached that point of discussion.

Q. What was the original asking price on that property?

A. Oh, it ranged from one hundred forty to [39] one hundred eighty thousand.

Q. Now, you state that in your opinion the fair market value is seventy-eight thousand now?

(Testimony of Franklin T. Morrell.)

A. That is correct.

Q. Is it your opinion that the fair market value would be substantially that same amount as of December of 1956? A. I do.

Q. And isn't it a fact, Mr. Morrell, that in 1955, at the time that Mr. Ketcham terminated business out there, properties were substantially higher in value at that time?

A. That is correct, yes.

Q. How did you arrive at that particular figure of seventy-eight thousand dollars?

A. Somewhat on the basis of comparative values. From the original parcel, there was a portion sold off, on the tip, there. I would value the building approximately fifty-five thousand, and the remaining land about twenty-three thousand.

Q. How big a parcel of land is there?

A. It was originally triangular in shape. One side being two hundred thirty-eight foot, by two hundred thirty feet, by approximately two hundred feet. And on the other side, then, another two hundred feet.

Q. Well, acre-wise, what does it contain? [40]

A. Well, just in estimations here, I would say just slightly over an acre. Just in guessing here, an acre being two hundred and six foot square.

Q. And did you take into consideration that it fronts on two very important thoroughfares in Henderson? A. I did.

Q. Did you determine a front-foot figure based on that?

(Testimony of Franklin T. Morrell.)

A. I figured it on a basis of approximately a hundred feet, or a hundred dollars a foot, which is higher than what anything else is selling for at the present time. However, it does have a little more depth than comparable properties.

Q. And you figured a hundred dollars a front-foot on which frontage?

A. It would be off of the highway frontage. Everyone must remember that from the blacktop strip to the streetline, which his property abuts, is one hundred twenty-seven feet, and from that to the edge of the property, is another fifty-feet, with controlled access to it. It doesn't really have one hundred percent highway access.

Q. And your figure of the valuation, then, actually is only seventy thousand dollars different than Mr. Ketcham's, is that correct? [41]

A. Approximately seven thousand dollars, not seventy.

Mr. Cannon: That is all.

Referee: May he be excused.?

(Witness Morrell excused.)

Mr. Zenoff: As my last witness I would like to recall Mr. Ketcham for a question or two.

Mr. Cannon: Frankly, I don't think that—there is certainly no showing of residence here so far. He has already testified to that.

Mr. Zenoff: I am just going to call him as a short witness.

CHARLES J. KETCHAM

having been previously duly sworn, resumed the stand in behalf of the Claimant, and testified further as follows:

Redirect Examination

Q. (By David Zenoff): Mr. Ketcham, you have testified, in answer to the Court, that you figured your assets to be [42] worth one hundred twenty-five thousand dollars? A. Yes.

Q. Would you mind itemizing them, and the valuation you place on each?

A. Yes. Eighty-five thousand dollars on the Henderson property. Seventy thousand dollars on the Twin Lake Shopping Center property. Eight thousand dollars on the Sky Haven Airport.

Q. What does that consist of, stock or land?

A. Stock in a corporation owning the land and the buildings. Approximately six thousand dollars on Seventeenth and Fremont, in leasehold deposits in the building. The Twin Lakes Shopping Center stock, it is seventeen acres that are free and clear over there and I value the acreage at approximately four thousand dollars an acre.

Referee: You own seventeen acres?

A. There is seventeen acres, and it is free and clear. And twenty-five percent of the stock is represented by one hundred eighty-seven and a half shares.

Mr. Zenoff: You own one-fourth of what you place at a valuation of seventy thousand dollars?

(Testimony of Charles J. Ketcham.)

A. That is correct.

Referee: And that is over and above this shopping center? A. No, that is it.

Mr. Zenoff: That is the same?

A. Right. And the balance is made up then in oil and gas leases.

Referee: What is the value of this Twin Lakes Shopping Center investment, fifteen thousand dollars, or——

A. Well, I have called it fifteen thousand dollars, as a net, after costs and et cetera.

Referee: That is your share, fifteen thousand dollars? A. Yes.

Referee: And what are the oil and gas leases that you have?

A. It represents approximately twenty-eight hundred acres.

Referee: What do you think they are worth?

A. Well, I just paid another fifty cents an acre on them for about the third time. I would say somewhere in the neighborhood of three thousand or four thousand dollars. [44]

Mr. Zenoff: Mr. Ketcham, as to the three or four thousand dollars in oil and gas leases. Is that what you paid for them? A. Yes.

Q. Well, how would you get a return on that? Is there oil and gas?

A. Well, we have had numerous offers to sell them.

Q. But there is no oil or gas being developed there now?

(Testimony of Charles J. Ketcham.)

A. No. There wasn't when I bought them.

Q. As to the Twin Lakes Shopping Center stock. The corporation of which you own one-fourth—owned some realty—is that what you testified to?

A. Yes, that is right, uh huh.

Q. And how much have you invested in that stock?

A. Just offhand I couldn't say. I have invested one-fourth of whatever has been invested out there.

Q. Well, now, you testified to the Court that the whole value of the realty would be around sixteen or seventeen thousand dollars, of which you had one-fourth?

A. No, I said there were seventeen [45] acres, approximately, worth four thousand dollars an acre.

Q. Oh, I see. I am sorry. And the Sky Haven Airport, you testified the value of your interest there was eight thousand? A. Uh-huh.

Q. And what is that?

A. That is actually investment.

Q. You have got eight thousand dollars in it?

A. Yes.

Q. And is this a corporation? A. Yes.

Q. And the corporation operates it?

A. No, the corporation doesn't operate it, they own the airport and the facilities.

Q. And does the corporation then lease to the operators? A. Yes.

Q. How much is the rental on that lease?

A. I don't know.

(Testimony of Charles J. Ketcham.)

Q. Have you gotten any return from it?

A. No.

Q. How long have you owned it? [46]

A. Since about 1954 or '53.

Q. Have you gotten any return from the Twin Lakes Shopping Center stock?

A. Not from the stock. It was in notes that the corporation owed me that have been paid off.

Q. Now, Mr. Ketcham, have you had demands made upon you by the creditors that are attached to this list that I had admitted into evidence here?

A. Yes, I had claims made, uh huh.

Q. And you have been unable to pay those claims?

A. Well, the small creditors constitute approximately all of the undisputed claims, and I have been paying them off. Most of the other claims that are filed as attachments on the real property, are disputed claims.

Mr. Zenoff: I have nothing further, your Honor.

Recross Examination

Q. (By Howard W. Cannon): Mr. Ketcham, how many of those small claims would you say you have paid off in the last year?

A. About six thousand dollars worth of [47] them.

Q. And you have continued to pay those creditors over a period of time, is that right?

A. Yes, uh huh.

(Testimony of Charles J. Ketcham.)

Referee: Do you have any lawsuits pending against you, other than this lawsuit that the Commercial Credit has brought?

A. Yes, there are several.

Referee: Based on these claims?

A. No, the claimants—there are very few of the small creditors—I don't know just exactly how many, but there are in the minority. Probably a half a dozen of the small creditors have started litigation to collect. However, Young Electric Sign has started litigation, which is disputed. Howard E. Wingo, which is acknowledged, and has an attachment. The State sales tax, which has a claim, which is acknowledged, and there has been an attachment. Those constitute about the only lawsuits pending.

Referee: Anything further?

Mr. Zenoff: Nothing further, your Honor.

Referee: All right, Mr. Ketcham, that is all. [48]

(Case presented on behalf of Alleged Bankrupt.)

Mr. Cannon: I will call Mr. Ketcham.

CHARLES J. KETCHAM

having been previously duly sworn, called as a witness in behalf of Alleged Bankrupt, testified as follows:

Direct Examination

Q. (By Howard W. Cannon): Do you have any tax liens filed against you?

(Testimony of Charles J. Ketcham.)

A. Yes, I have the one sales tax.

Mr. Zenoff: That is the only one?

A. That is the only one. Now, you say claims?

Mr. Zenoff: Claims, yes.

A. I have a tax claim, Federal Income Tax Claim, for finance reserves, which you are referring to, which are retained in reserve, and which has been offset by the two hundred nine thousand dollar loss taken in 1956, so that any claim that is outstanding in regard [49] to income tax is offset by the loss.

Mr. Cannon: Isn't it a fact also that, according to your accountants, you will have a substantial refund from the income tax?

A. Yes, that is right.

Q. That will increase your assets by whatever that refund will be?

A. Yes, that is correct.

Mr. Cannon: Nothing further.

Mr. Zenoff: I have nothing further, your Honor.

Referee: Is your matter submitted, Mr. Zenoff?

Mr. Zenoff: Yes, your Honor.

Referee: And you, Mr. Cannon?

Mr. Cannon: I think it has all been submitted, now. Everything is in the record, as far as I am concerned.

Mr. Zenoff: If your Honor please, I believe that I could present the gist of this argument very briefly. I think, if the Court will go through each allegation of the petition, that substantially all of them are beyond doubt. There is a jurisdictional

point as to residence, and I take this opportunity to call [50] to the Court's attention the jurisdictional requirements of the bankruptcy act as amended.

Now, originally—in fact, your Honor I'll take the time now to—while I am talking—to supply the court with points and authorities on that particular point. Originally, jurisdiction as to residence was as to the one word, meaning jurisdictional. But, subsequent to the original act the amendment provides now, in effect, that it is now a matter of venue and not jurisdiction. And the Court can take cognizance of the location of the alleged bankrupt's assets and the residence of the creditors, so that as a matter of convenience, the Court may or will take jurisdiction over the matter, whereas it ordinarily, or in the event of a change of residence, may transfer the cause to a jurisdiction where assets and creditors are located. All of that is contained on pages one, two and three, of the memorandum that has just been submitted to the Court.

I feel, in all other respects, that the allegation of this petition has been established, to-wit, that even on Mr. Ketcham's own testimony, substantiated by the testimony of others, his assets did not total one hundred twenty-five thousand dollars, and we are in serious jeopardy here, not only the claimant whom I represent, but all the other creditors that are in the record, and if this foreclosure were allowed to go through [51] tomorrow, that my client and all of these creditors will be virtually wiped out.

There is a substantial asset out in Henderson. What the value of the stock in the Twin Lakes Shopping Center might be I don't know, and I don't believe probably Mr. Ketcham could know. On this Federal Income Tax refund, that is too abstract. We don't really know what the property in Henderson will bring, but we have had the testimony of a real estate man here, and I feel in the interest of all parties concerned, and even the good faith shown by the witness here, Mr. Ketcham on the stand, shows that the witness or rather the bankrupt, wants to take care of these creditors, I feel in fairness to all parties concerned that the bankruptcy should be allowed, and that a stay order be granted holding off the foreclosure, and with the hope and thought, and with the attempt on the part of all of us concerned, to get a liquidation of the property so that the creditors, all of the creditors, can be benefited, perhaps also Mr. Ketcham.

Referee: Mr. Cannon?

Mr. Cannon: Well, I submit to the Court that certainly the residential requirements have not been proven here. The act requires that the alleged bankrupt must have resided or conducted his business within the district for the preceding six months, and the [52] only waiver of that requirement is that he must have conducted that business for the major portion of that six months' period within the district.

Now, there isn't anything before the Court here to show that Mr. Ketcham conducted any business whatsoever in this jurisdiction within the six

month's period prior to the filing of this petition, and in truth and in fact, his last business was conducted in November of 1955, at the time that the business was terminated here.

Now, as to the insolvency, even if we use the petitioner's figures here, certainly Mr. Ketcham is not insolvent under the definition of the act, because there is nothing to show that his debts amount to more than ninety-five thousand dollars, which was his own testimony. And certainly there is nothing—the only dispute as to what his assets might consist of is his valuation of eighty-five thousand dollars on the property in Henderson, as compared to Mr. Morrell's testimony, that in his opinion the fair market value was seventy-eight thousand dollars. Mr. Morrell did testify that at the previous time and place of course the valuation would have been higher. So, we only have a discrepancy of seven thousand dollars. If we were to assume that is correct, and Mr. Ketcham is wrong in that respect, still we do not have a situation of a case coming within [53] that insolvency, as defined under the act.

So, on the two points raised, I submit to the Court, that the petition should be denied.

Now, if the Court feels that there is a basis for the petition, and that the matter should be transferred as suggested by Mr. Zenoff, then we certainly feel that an Order should be placed in effect preserving these assets, and prohibiting the sale, which is supposedly to take place tomorrow, because that is the substantial asset belonging to Mr. Ketcham,

and it must be protected for the benefit of the creditors. And if a bankruptcy, or further hearing is to be had, it is possible that we might elect to attempt to come in under Chapter XI, because it is Mr. Ketcham's desire first to protect all of these creditors. If he came in here voluntarily and took over these obligations which had been assigned to the wife in the divorce proceedings, and which he testified and he resubmitted himself to this jurisdiction and took over the property in an attempt to try to bring the thing out of it, and pay off these creditors, certainly we don't want the actions of any third party to interfere or to in any way jeopardize that attempt on Mr. Ketcham's part.

Mr. Zenoff: That is correct, your Honor. If—it must be borne in mind that the essential [54] point of the petition is not the question of residence. First, we must determine whether or not the proof brought out on the examination sets forth or convinces the Court that the man was insolvent.

Now, on the figures presented by Mr. Ketcham, he testified that of this ninety-five thousand dollars, he has taken into consideration Commercial Credit which he has previously testified to was around a thousand dollars, or in excess of a thousand dollars. I do not need to remind the Court, but taking his figure of ninety-five thousand, and his statement of assets being one hundred twenty-five thousand dollars, and this testimony of Mr. Hillis—assuming then that upon the basis of the record that it is correct, and that the Court then finds that Mr. Ketcham was insolvent, then we go to this question

of residence, because, as I have outlined to the Court before, it is simply contained in section two of the bankruptcy act as amended, in subsection c, that the judge may transfer any case under this title to a court of bankruptcy in any other district regardless of the location of the principal assets of the bankrupt or the principal place of business, if the interest of the parties will be best served by such transfer.

That particular clause is a catchall, that they can encompass the previous restriction, where the question of residence was jurisdictional. But, if any [55] Court in the Federal system found the man insolvent, and it happened to be filed in the wrong court, it could be transferred or retained. It is no longer jurisdictional, your Honor.

Referee: Well, this matter will stand submitted, and the Temporary Stay Order will stand in full force and effect until the Petition is determined. Were we to hear the matter of the Temporary Restraining Order at this time? The returnable date of that restraining order was March 22, 1957. Was it not continued, by stipulation of counsel, until this time and place?

Mr. Goldwater: The Hearing was continued, yes.

Referee: Then are you willing to further continue this matter, pending the decision on the Petition of the Creditors at this point, or do you want to go ahead and be heard on your Order to Show Cause?

Mr. Goldwater: We will submit it.

Referee: Then the Order will remain in full force and effect, pending a further Order in these proceedings.

We will be in recess until two o'clock at which time we will take up the Aqua Hotel [56] matter.

(Recess taken at 11:45 a.m.) [57]

[Endorsed]: Filed February 10, 1958.

[Endorsed]: No. 16469. United States Court of Appeals for the Ninth Circuit. M. M. Zenoff, Commercial Credit Corporation and Southwestern Publishing Company, Inc., Appellants, vs. Charles J. Ketcham, doing business as Lake Motors and Studebaker Sales and Service and Studebaker-Packard Sales Agency, Appellee. Transcript of the Record. Appeal from the United States District Court for the District of Nevada.

Filed: May 1, 1959.

Docketed: May 15, 1959.

Supplemental Filed: January 8, 1960.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

In The United States Court of Appeals
For The Ninth Circuit

No. 16469

M. M. ZENOFF, COMMERCIAL CREDIT CORPORATION, and SOUTHWESTERN PUBLISHING CO., INC., Appellants,

vs.

CHARLES J. KETCHAM, Appellee.

STATEMENT OF POINTS ON WHICH
APPELLANTS WILL RELY

The following are the points on which Appellants will rely on this appeal:

1. The Referee erred in dismissing the proceedings for want of jurisdiction.
2. The Court erred in denying Appellants' petition to vacate and set aside the sale under the deed of trust.
3. The Court erred in refusing to pass upon Appellants' petition for review on its merits.
4. The Court erred in making and entering the order dated February 26, 1959.

CALVIN C. MAGLEBY,
/s/ CALVIN C. MAGLEBY,
Attorney for Appellants.

Acknowledgment of Receipt of Copy Attached.

[Endorsed]: Filed November 27, 1959. Paul P. O'Brien, Clerk.